

REMARKS

This is in response to the Office Action mailed April 1, 2003. Applicant appreciates the indication of allowable subject matter in claims 3-5. The foregoing amendments are believed to place the claims of the application in condition for allowance, together with acceptance into the files of the attached Declaration of Wei regarding his obligation to assign at the time he made his invention and Declaration of Vasudeva regarding his obligation to assign at the time he made his inventions of patents assigned to Maxtech. The following remarks respond to the points of the Office Action.

With respect to paragraph 1 of the Office Action, applicant agrees that claim 2 has been canceled and claim 1 and claims 3-16 were pending. Claims 9-16 have now been canceled and claims 17-25 have been added.

With respect to paragraph 2, the original patent has not been surrendered because it has not been located. If it cannot be located soon, a Declaration of Wei indicating that he does not know the whereabouts of the original Letters Patent and that he believes it to be lost will be submitted.

With respect to paragraph 3 of the Office Action, a Supplemental Declaration of Wei including the language set forth in 37 C.F.R. 1.175(b)(1) and quoted in the Office Action will be submitted when the claims are allowed, so that the Supplemental Declaration embraces the allowed claims.

With respect to paragraph 4 of the Office Action, formal drawings incorporating the corrections to FIGS. 1-3 are submitted herewith. Applicant did not propose a correction to FIG.

4 inasmuch as applicant has not noted any errors in the drawing of FIG. 4 or any inconsistencies with FIGS. 1-3, as corrected.

With respect to paragraph 5 of the Office Action, applicant is pleased to note that the amendments to the specification, claims and drawings have been found not to include any new matter.

With respect to paragraph 6 of the Office Action, applicant apologizes for the inadvertent stenographic error in the previous Amendment, and has submitted a corrected/accurate amendment to the specification above.

With respect to paragraph 7 of the Office Action, a Declaration of the inventor Wei is submitted herewith, in which Mr. Wei states that he was under an obligation to assign his rights to Maxtech at the time his invention was made. This is believed to fully satisfy both the requirements of the Office Action and of 35 U.S.C. §103(c). The Declaration of Vasudeva submitted amplifies on his prior declaration stating that Maxtech is the assignee of Patent Nos. 5,803,254; 5,887,715; 6,105,767; and 6,105,770; by further stating that Mr. Vasudeva was under an obligation to assign the subject matter of those patents to Maxtech at the time his inventions of those patents were made. Thus, the combined effect of Declaration of Wei and Declaration of Vasudeva submitted herewith is that all of the relevant inventions were either assigned to Maxtech or that the inventors were under an obligation to assign to Maxtech at the time all of the inventions were made. Thus, the Declarations together confirm common ownership at the time all of the relevant inventions were made and therefore remove the potential of any of the patents as a reference for precluding patentability under 35 U.S.C. §103.

With respect to paragraph 8, 9 and 10 of the Office Action, applicant is pleased to note that the rejections under 35 U.S.C. §112 set forth therein have been overcome. The new claim 17 set forth above is believed to obviate the rejection of claims 9-16 under 35 U.S.C., second paragraph. A careful review of claims 6 and 7 indicated that the foregoing amendments would make them more consistent with claim 1. Claim 1 was amended to remove an unnecessary limitation; namely, that the cover be "pivotally" connected to the base.

In paragraphs 11 and 12 of the Office Action, claims 1, 6-10 and 14-16 are rejected under 35 U.S.C. §102(e) as being anticipated by *Vasudeva* '770. With respect to independent claim 1, it calls for at least one receiving member connected to one of the sidewalls at one end of a front side thereof, and pivotally connected to the sliding plate at one end of a rear side thereof. Claim 1 also calls for an actuating member pivotally connected between to the two side walls at two ends of a front side thereof and pivotally connected to the sliding plate at one end of a rear side thereof. Thus, the pivot points for the receiving member and actuating member are at the fronts of these elements, and the connection to the sliding plates are at the rears of these elements.

With reference to *Vasudeva* '770, the embodiment of FIGS. 1-6A does not meet the limitations of claim 1, because the gang bars, or sliding plates, are on the fronts of the receiving members/actuating member and the pivot points 16 of the receiving members are centrally located rather than being at the front of the receiving members. Although the sliding plate in tool box of FIGS. 7-15 of *Vasudeva* '770 is in the rear, the pivot points of the receiving members are in the middle of the receiving members, and not at the fronts as defined by claim 1. The embodiment of FIGS. 16-17 of *Vasudeva* '770 also has the sliding plate in the rear, but the pivot points of the receiving members are positioned toward the rear of the receiving members, to

facilitate gravity operation. The embodiments of FIGS. 18-22 and 23-28 also do not have the limitations defined in claim 1 with respect to the location of the sliding plate and the pivotal mounting points of the receiving members.

A rejection for anticipation requires that all elements of the claim be shown or described in the reference and, as set forth above, the *Vasudeva* '770 patent does not show or describe all of the limitations of claim 1. Therefore, the rejection of claim 1, and the claims 6-8 dependent therefrom, should be withdrawn and claims 1, 3-8 should be allowed.

With respect to the rejection of claims 9, 10 and 14-16 under 35 U.S.C. §102(e) based on *Vasudeva* '770, claim 17 has been added in place of claim 9 to combine "separating board" subject matter of original claim 11 therein with additional elements (as well as to resolve the rejection under 35 U.S.C. §112 noted above).

New claims 18-23 are similar to original claims 10 and 12-16, and new claims 24 and 25 also incorporate "separating board" subject matter of claim 11.

Claim 17 includes the feature of a separating board, originally found in claim 11, with at least one receiving member between a first sidewall and the separating board and an actuating member between a first sidewall and a second sidewall. It therefore distinguishes over *Vasudeva* '770. Applicant notes that the characterization of *Vasudeva* '770 set forth in paragraph 12 of the Office Action makes no reference to a separating board, and makes no specific application of *Vasudeva* '770 to claim 11. *Vasudeva* '770 does not have such a separating board, and does not have the shorter receiving members and longer actuating member of claim 17. Therefore, claim 17 is patentable over *Vasudeva* '770, together with claims 18-23 dependent therefrom.

Claims 24 and 25 also include the feature of a separating board, wherein the separating board is in two portions respectively supporting a shorter and a longer receiving member. This is not shown in *Vasudeva* '770, and the claims 24 and 25 are therefore patentable over *Vasudeva* '770.

With respect to claims 13 and 14 of the Office Action, claims 1 and 8-16 are rejected as being unpatentable over *Howard* 4,531,646 in view of *Resendez, Jr.* 4,660,902. As noted in response to the previous Office Action and favorably discussed with the Examiner at the interview held at the Patent Office, the *Howard* '646 patent is directed toward a stationary display rack especially designed to maximize access to articles held therein, whereas applicant's device is a toolbox which can be closed and is portable to move the tools from place to place. It would not be obvious to provide Howard with a cover means, as it would obviate the stated purpose of the Howard display rack, namely, providing maximum access to the trays for loading and dispensing articles at the point of sale.

Resendez, Jr. is cited for suggesting a display case with a hinged transparent, lockable front door/covering means for the purpose of providing selective security or access for displayed merchandise on shelves. Applicant's reading of Resendez, Jr. finds that it is directed toward a cabinet used in the home to hold stereo components, video recording equipment, and the like, wherein the cover precludes intrusion by inquisitive children, pets and the like. Resendez, Jr. in particular provides a cabinet wherein access to both the front and the top of the cabinet is prohibited. Applicant surmises that the top access is secured to protect a turntable or other top-loaded piece of stereo equipment. Thus, there is nothing in Resendez, Jr. that suggests such a cabinet would be desirable for the display and dispensing of articles of the type that would be

positioned on pivotal trays of Howard, i.e. articles that would be small, lightweight, and require immediate access by a customer, nor for the easy replenishment of such articles on the shelves. Instead, the Resendez, Jr. cabinet is for the permanent storage and occasional use of relatively large heavy items interconnected by cables. Quite simply, the Howard display rack and the Resendez, Jr. storage cabinet are completely different structures used for completely different purposes, such that a combination of this art is in no way suggested.

Furthermore, the trays of the Howard display cabinet extend forwardly of the sidewalls, thereby providing visibility of and easy access to the displayed articles. In order to place a cover of Resendez, Jr. on the Howard display cabinet, it would be necessary to either: (1) truncate the Howard trays, which would detract from the stated purpose of the Howard display rack and make it less useful, or (2) substantially modify the cover of Resendez, Jr. to fit over the extending trays which would create an ungainly structure that, again, would not provide the desired visibility of and access to merchandise.

The *Howard* '646 patent has no teaching or suggestion that a cover would be necessary or desirable in any way, and the *Resendez, Jr.* '902 has no teaching or suggestion that a cover should be put on a display rack such as that of Howard. The possibility of putting on such a cover would require substantial modification of either the Howard display rack or the Resendez, Jr. cover. A cover would diminish the functionality and purpose of the Howard display rack. On the whole, it appears that the proposed combination of *Howard* '646 and *Resendez, Jr.* '902 may have incorporated impermissible hindsight, as they do not teach or show applicant's structure individually and provide no reason for making a combination. Therefore, claims 1 and 17-23 are believed clearly patentable over Howard in view of Resendez, Jr.

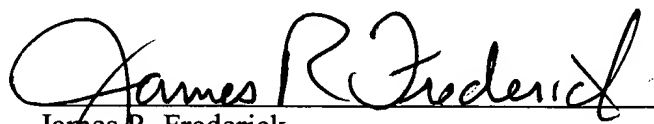
Applicant also notes the contention that one of the walls 14, 26 or 15, 26 of *Howard* '646 may be considered to define a separating board. The vertical members 26 of *Howard* '646 are strips carrying pivot pins and are fixed immediately adjacent the sidewalls 14 and 15. Thus, they do not consist of a separating board spaced apart from the sidewalls. Claim 17 and the claims 18-23 dependent therefrom are additionally believed patentable over the combination of *Howard* and *Resendez, Jr.* for that reason. In claim 17, a receiving member extends between a first sidewall and a separating board, and an actuating member extends between the first sidewall and the second sidewall. This is not shown or suggested in *Howard* '646. In claims 25 and 26, the separating board has first and second portions, supporting a shorter and a longer receiving member. *Howard* '646 does not show or suggest such structure. Therefore claims 17-25 are also believed patentable over *Howard* '646.

The remaining paragraphs of the Office Action do not require a response.

Accordingly, the claims of this application, as amended, are now believed patentable and in condition for allowance, and such favorable action is earnestly solicited.

Respectfully submitted,

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